

# Public Service Commission of the District of Columbia

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WASHINGTON, D.C. 20005  
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IN REPLY REFER TO

December 17, 1998

Ms. Magalie Salas  
Commission Secretary  
Office of the Secretary  
Federal Communications Commission  
CC Docket No. 96-45  
Room B-204  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: Petition of Waiver

Dear Ms. Salas:

Please find attached one original and five copies of a Petition of Waiver filed by the Public Service Commission of the District of Columbia requesting that Bell Atlantic-Washington, D.C., Inc., be permitted to receive federal universal service support retroactive to January 1, 1998.

If you have any questions regarding this filing, please feel free to contact me at (202) 626-5140.

Sincerely,

Richard A. Beverly  
General Counsel

Attachment

cc: Sheryl Todd  
Federal Communications Commission  
Universal Service Branch

No. of Copies rec'd 0+5  
List A B C D E

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

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OFFICE OF THE SECRETARY

**IN THE MATTER OF**

**FEDERAL-STATE JOINT BOARD ON  
UNIVERSAL SERVICE**

**CC Docket No. 96-45**

**PETITION OF THE PUBLIC SERVICE COMMISSION  
OF THE DISTRICT OF COLUMBIA  
FOR WAIVER**

The Public Service Commission of the District of Columbia ("DCPSC") hereby requests that the Federal Communications Commission ("FCC") 1) waive the requirement that States designate, by December 31, 1997, an eligible carrier to receive universal service support; and 2) permit Bell-Atlantic - Washington, D.C., Inc., ("BA-DC") to receive universal service support retroactive to January 1, 1998.

**I. BACKGROUND**

On May 8, 1997, the FCC issued its Report and Order on Universal Service, CC Docket No. 96-45, FCC Order 97-157 ("Report and Order") which, among other things, determined that only common carriers designated by a State commission would be eligible to receive federal universal service support.<sup>1</sup> On September 30, 1997, BA-DC filed an application with the Commission requesting designation as an eligible carrier.<sup>2</sup> BA-DC supplemented its Application with additional

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<sup>1</sup> Report and Order at ¶¶ 132 and 134.

<sup>2</sup> See Formal Case No. 962T, Letter from J. Henry Ambrose to Jesse P. Clay, Jr., at 3 (dated September 30, 1997) ("Application").

information on December 23, 1997.<sup>3</sup>

In order to be designated as an eligible carrier, a carrier must offer all of the services designated by the FCC for support under the Lifeline program and ensure that customer eligibility under the program is based solely on income or income-related factors. BA-DC implements the Lifeline program in the District through its Economy II Service plan. Prior to issuance of the Report and Order, BA-DC's Economy II Service had two components: a \$1.00 per month flat rate service with unlimited calling for low income customers over age 65, and a \$3.00 per month message rate service with a limit of 120 message units per month for low income customers who are under age 65 and are also heads of household. The message rate service was income-qualified while the flat rate service was age *and* income qualified.

To satisfy the FCC requirement that eligibility for Lifeline be governed solely by income or income-related factors, BA-DC proposed to combine the program's two components into a single plan with the \$1.00 flat rate service available to senior citizens as a "Service Upgrade." According to BA-DC, the Service Upgrade would be subsidized entirely by D.C. ratepayers. However, it was unclear to the PSC whether BA-DC was offering the Service Upgrade as a separate program for income-qualified seniors or whether it was simply an enhancement to Economy II Service. If the Service Upgrade were a separate service, then it could not receive federal support because customer eligibility for the program is based on age, which is a prohibited non-income factor. If, however, the Service Upgrade were an enhancement to basic Economy II Service, and if the enhancement were funded entirely through intrastate subsidies, then federal support for the program would not be

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<sup>3</sup> Letter from J. Henry Ambrose to Jesse P. Clay, Jr., (dated December 23, 1997) entitled "Supplement to Request for Eligible Carrier Status" ("Supplement").

proscribed by the Report and Order.<sup>4</sup>

Initially, the DCPSC determined that the Service Upgrade was a separate service and, therefore, ineligible for federal support. However, after reconsidering the matter, the DCPSC determined that BA-DC's filings were more consistent with an intent to create an intrastate-subsidized enhancement to the basic Economy II Service. As a result, the DCPSC directed BA-DC to amend its tariff filings to conform to the company's intent.

Subsequently, the DCPSC determined that the new federal Lifeline criteria affected BA-DC's Message B Service. Pursuant to the tariff then in effect, when a customer faced disconnection for overdue local and/or long distance charges, the customer could continue to receive uninterrupted service by agreeing to be on Message B Service and paying off the past due charges in monthly installments. However, in order to be eligible for federal support, Message B Service must offer access to operator assistance or to interexchange services -- two calling features that BA-DC's Message B Service did not offer. Additionally, Message B Service permitted Company-initiated toll blocking; required customers to pay past due long distance charges as a condition for maintaining local service; and required customers to pay deposits even though their calls are subject to toll blocking -- conditions which render Message B Service ineligible for federal Lifeline support. Rather than conform Message B Service to the federal Lifeline requirements, BA-DC proposed to eliminate the federal subsidies for Economy II customers on Message B Service and require those customers to pay the non-subsidized monthly rate. After carefully considering the FCC Report and Order, the DCPSC modified the operation of the Message B program so that BA-DC's existing

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<sup>4</sup> See *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, DA 97-2478 (rel. December 30, 1997).

payment arrangements for customers currently on Message B Service were left undisturbed while ensuring that, in the future, the program is not used to circumvent the FCC Report and Order.

## **II. JUSTIFICATION FOR WAIVER**

The DCPSC believes a waiver is appropriate for several reasons. First, in 1994, the Council of the District of Columbia ("Council") mandated that the DCPSC reduce its staff by 40% in order to comply with a Congressional mandate to reduce the total number of positions in the District government. As a result of the reduction, the remaining DCPSC staff have been forced to spread their time over a steadily increasing number of matters. For instance, the DCPSC has only one economist specialized in telecommunications and he must review all the telecommunications issues before the DCPSC -- a factor that has delayed all telecommunications cases, including this one.

Second, the DCPSC, like other District government agencies, has had considerable difficulty attracting and retaining experienced attorneys primarily because District government attorneys are grossly underpaid as compared to their counterparts in the federal and private sectors. In the last two years, the DCPSC has experienced a turnover in virtually its entire legal staff with vacancy rates since January running as high as 40%. The DCPSC has been forced to replace its legal staff with inexperienced attorneys who cannot process the DCPSC's work as quickly as may be necessary.

Third, the DCPSC has historically ameliorated its staffing problems by contracting with outside legal consultants. However, in 1997, the Council eliminated the DCPSC's independent contracting authority as part of a District plan to centralize procurement functions. As a result of its own staffing problems and workload, the District's new centralized procurement office has been unable to address the DCPSC's procurement requirements in a timely fashion. This contracting

impediment, either directly or indirectly, delayed the resolution of all matters pending before the DCPSC.

Finally, the DCPSC's workload has increased significantly. In the area of telecommunications, alone, the DCPSC is defending its interpretation of the federal Telecommunications Act in U.S. District Court; reviewing interconnection agreements; establishing permanent prices for the unbundled elements of BA-DC's network; reviewing applications from competitive local exchange carriers seeking approval to enter the District's telecommunications market; revising payphone rules; examining the need for public interest payphones; investigating whether there has been a market failure in payphone pricing; determining whether, and to what extent, the DCPSC can prohibit the installation of payphones; and filing comments with the FCC on matters of interest to the DCPSC. Additionally, the DCPSC must continue to address the normal regulatory issues for all three of the industries it regulates including tariff filings; mergers and acquisitions; financing issues; least cost plans; consumer complaints; quality of service; and the numerous and complex issues surrounding deregulation of the District's electric and gas industries.

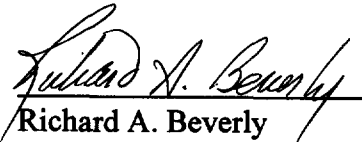
Given the impediments set forth above, and considering the difficulties in reconciling BA-DC's tariff revisions with the FCC's Report and Order, the DCPSC was unable to finally approve BA-DC's tariff revisions until November 5, 1998. A copy of that decision is attached. Under these circumstances, BA-DC and D.C. ratepayers should not be penalized for the DCPSC's delay in designating BA-DC as an eligible carrier.

BA-DC took reasonable steps to be designated an eligible carrier by January 1, 1998 and, at present, it is the only eligible carrier in the District of Columbia. Waiving the requirement that the Commission designate an eligible carrier by January 1, 1998 and permitting BA-DC to receive

universal support retroactive to January 1, 1998, will serve the public interest in that it will allow BA-DC's low-income customers, many of whom are elderly, to continue to receive vital telecommunications services at an affordable price. For these reasons, the DCPSC respectfully requests that the FCC grant this petition.

On behalf of the

PUBLIC SERVICE COMMISSION OF THE  
DISTRICT OF COLUMBIA

  
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General Counsel

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